

EXHIBIT D

PUBLIC REDACTED VERSION

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
Defendant.)
_____)

-- HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY--

Videotaped deposition of ALAN J. COX, PH.D.,
taken at the law offices of Keker & Van Nest LLP,
633 Battery Street, San Francisco, California,
commencing at 9:24 a.m., on Wednesday, October 26,
2011, before Leslie Rockwood, RPR, CSR No. 3462.

PAGES 1 - 306

Page 1

1 Q. Do you recall who that was?

2 A. No.

3 Q. How long did the conversation last?

4 A. It was about 15, 20 minutes at the most.

5 Q. And based on your conversation with 10:22:11

6 Mr. Agarwal, are you relying on your conversation with

7 Mr. Agarwal on October 24th in support of any of the

8 opinions that you expect to offer in this case?

9 MR. KWUN: Objection. Form.

10 THE WITNESS: Well, it just provides 10:22:32

11 confirmation of -- contamination of what it I was -- let

12 me put it better.

13 It provides further confirmation that I what

14 did in terms of deducting costs from revenues and

15 calculating the wrongful profits was appropriate. 10:22:49

16 Q. BY MR. NORTON: And you had, in your

17 background explanation of what Exhibit 669 was, you said

18 that you had done an allocation of expenses based on your

19 prior conversations with Mr. Agarwal, the pertinent

20 deposition testimony, and your review of the Android P&L. 10:23:07

21 Is that right?

22 MR. KWUN: Objection. Form.

23 THE WITNESS: Let me correct one part of the

24 premise. I didn't do an allocation. I just took the

25 expenditures that Google had booked on its P&Ls for 10:23:17

1 Android, having determined based on the sources that you
2 cited that it was appropriate to do so.

3 Q. All right. So you reached an opinion prior
4 to October 3rd that the allocation of expenses on the
5 Android P&L was appropriate? 10:23:41

6 THE WITNESS: Objection. Form.

7 THE WITNESS: You keep using the word
8 "allocation," and let me just say as a blanket statement
9 that there was no allocation involved, as far as I could
10 tell. That these were just bookings of expenditures made 10:23:56
11 on the Android platform.

12 Q. BY MR. NORTON: And to reach that conclusion,
13 you looked at the Android P&L, the pertinent depositions,
14 and you had a conversation or conversations with
15 Mr. Agarwal? 10:24:11

16 A. That's correct.

17 Q. All right. And when you say "pertinent
18 depositions," which depositions are you referring to?

19 A. Well, his certainly.

20 Q. Anyone -- anyone other than Mr. Agarwal? 10:24:20

21 A. Not -- none that I can recall as I sit here.

22 MR. NORTON: I think it might be expeditious
23 to take a short break because I'm going to mark a bunch
24 of exhibits, and I won't make you sit here and watch me.

25 THE WITNESS: Okay. 10:24:46

1 Mr. Schmidt or anything, but I was retained, as I
2 describe in my report, to calculate damages in this
3 matter as an economist, and I believe I have done that.
4 And I can rely on my own professional training and the
5 methodologies of the discipline to do that. 11:06:44

6 Q. All right. And one of the things that you
7 have to do in order to calculate wrongful profits is to
8 determine what expenses are attributable to Android;
9 correct?

10 A. That's correct. 11:06:56

11 Q. All right. And in order to determine what
12 expenses are attributable to Android, you reviewed the
13 Android P&L; right?

14 A. Yes.

15 Q. You spoke to Mr. Agarwal? 11:07:05

16 A. Yes.

17 Q. And you reviewed Mr. Agarwal's deposition
18 transcript?

19 A. That's correct.

20 Q. All right. And it's -- using the standards 11:07:12
21 in your discipline, you believe that that is a sufficient
22 basis for you to determine what the appropriate costs are
23 for Android?

24 A. Yes.

25 Q. All right. Now, you have -- in your stack 11:07:27

1 there of exhibits, one of them is Exhibit 278 -- I'm
2 sorry. 678. I'm 400 behind.

3 MR. KWUN: I don't have a copy of that
4 document.

5 MS. DEARBORN: (Indicating.) 11:07:45

6 Q. BY MR. NORTON: And you also have 679.

7 A. Yes.

8 Q. All right. Let me draw you to 679 first.

9 A. Okay.

10 Q. I think 679 is the -- yeah. There we go. 11:07:54

11 MR. KWUN: Which one is 679?

12 MR. NORTON: 679 should be the --

13 THE WITNESS: (Indicating.)

14 MR. KWUN: Okay.

15 Q. BY MR. NORTON: So have you ever seen -- do 11:08:04

16 you recognize Exhibit 679 at all?

17 A. Yes.

18 Q. All right. And what do you recognize it to

19 be?

20 A. The deposition of Mr. Agarwal. 11:08:12

21 Q. All right. And did you read that before you

22 submitted your report?

23 A. I certainly read parts of it, yes.

24 Q. All right. Do you know whether you read the

25 parts that I've handed to you? 11:08:23

1 A. I don't -- I don't recall without reading it.

2 Q. How did you decide which parts of

3 Mr. Agarwal's deposition testimony you should read?

4 A. Well, I had my staff look it over. I asked

5 them to point me to areas of relevance, and I looked at 11:08:40

6 other parts as I've -- as I saw fit.

7 Q. Okay. So on Exhibit 679, the second page of

8 it, which has the actual testimony from pages 50 to 53,

9 and if you -- I'm going to refer you to page 50,

10 beginning at line 16, and I'll give you a moment to look 11:09:14

11 at it.

12 Why don't you go ahead and read page 52 to

13 yourself, page 52, line 14, about halfway down, and just

14 let me know when you've finished.

15 A. Okay. 11:09:26

16 Okay. I've looked it over.

17 [REDACTED]

18 [REDACTED]

19 A. I think I have, yes. I remember the

20 confusion about gross and growth. 11:10:35

21 Q. All right. And that's on page 53?

22 A. Yes.

23 Q. All right. And on page -- the excerpt that I

24 asked you to read from page 50 to 52, you understand that

25 Mr. Agarwal was testifying at that point in part about 11:10:48

2	A. Yes.
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114

Page 73

Page 74

19 Q. BY MR. NORTON: And so the only person at
20 Google that you spoke to to determine whether or not the 11:14:28
21 allocation on the P&L was an appropriate one, that is the
22 manner in which the expenses were booked was an
23 appropriate one, was Mr. Agarwal; correct?

24 A. Yes. I spoke with Mr. Agarwal. I think the
25 first time I spoke with Mr. Agarwal there was somebody 11:14:48

1 else in the room, but, basically, the discussion was
2 through Mr. Agarwal.

3 Q. All right. And in your report the only
4 person you cite in support of the allocation of expenses
5 is Mr. Agarwal; right? 11:15:00

6 A. That's -- that's correct, yes.

7 Q. All right. And when I asked you in your
8 deposition testimony here today the bases for your
9 conclusion that the allocation was appropriate, the only
10 person that you've ever mentioned is Mr. Agarwal; 11:15:14
11 correct?

12 MR. KWUN: Objection. Form.

13 THE WITNESS: That's correct. Though, as I
14 said in reference to these notes that we talked about
15 earlier, I did do an additional test that determined to 11:15:23
16 my satisfaction that my original conclusion after those
17 discussions was correct.

18 Q. BY MR. NORTON: And your test was to go back
19 and to ask Mr. Agarwal again?

20 A. Well, I went back and asked Mr. Agarwal 11:15:35
21 again, and he provided me with specific numbers that
22 explained a change in expenditures on engineering.

23 Q. Now, you also have Exhibit 678 in front of
24 you; right? Should be the handwritten notes.

25 MR. COOPER: Are the handwritten notes 678 or 11:16:02

1 679?

2 MR. NORTON: I apologize. 679.

3 MR. KWUN: 679 I was told was the
4 transcript -- the Agarwal transcript.

5 THE WITNESS: That is correct. 11:16:13

6 MR. NORTON: All right. I'll do that again
7 before the day is out. 679 is the transcript. 678, the
8 witness actually knows best, but should have the sticker
9 that says 678.

10 THE WITNESS: 678 are the handwritten notes. 11:16:25

11 Q. BY MR. NORTON: Okay. Thank you.

12 And those are your notes?

13 A. Yes.

14 Q. And these are notes of your conversations

15 with Google employees? 11:16:39

16 A. Yes.

17 Q. Are these all of your notes of your
18 conversations with Google employees?

19 A. They're all the ones that I could find, yes.

20 And there were other interviews where I didn't take 11:16:55
21 notes.

22 Q. How many times did you interview -- before
23 October 3rd did you interview Mr. Agarwal?

24 A. At least once. I'm trying to think if there
25 was a second occasion. It may have been twice. 11:17:26

Page 77

1 Q. And in Exhibit 678, are there any notes of
2 any of your conversations with Mr. Agarwal?

3 A. I don't believe so, no.

4 Q. Were your interviews with Mr. Agarwal prior
5 to October 3rd in person or by telephone? 11:17:46

6 A. By telephone.

7 Q. Did any members of your staff participate --
8 NERA staff participate in that phone call or phone calls?

9 A. Yes. They did.

10 Q. Did they take notes? 11:18:03

11 A. They may have.

12 Q. Did you direct them to?

13 A. No.

14 Q. Did you direct them not to?

15 A. No. 11:18:09

16 Q. Do you know whether any members of your staff
17 have a practice of keeping notes?

18 A. Generally, they don't.

19 Q. Do you know was there a particular person on
20 your staff who participated in your conversations with 11:18:20
21 Mr. Agarwal?

22 A. No.

23 Q. All right. So the three things that you
24 relied on to determine whether the allocation or booking
25 of expenses for Android was appropriate were your 11:18:45

1 interviews with Mr. Agarwal -- or interview, his
2 deposition testimony and the P&L itself?

3 MR. KWUN: Objection. Form.

4 THE WITNESS: Well, I also had some
5 discussion with counsel. But I didn't rely on that. 11:19:08

6 Q. BY MR. NORTON: So the only -- let me ask it
7 a little differently, then.

8 The only bases you're relying upon to reach
9 your opinion that the allocation of expenses that appears
10 on the Android P&L is an appropriate one, those bases 11:19:20
11 that you're relying on are Mr. Agarwal's deposition
12 testimony, your conversation or conversations with
13 Mr. Agarwal before October 3rd, the P&L itself?

14 MR. KWUN: Objection. Form.

15 THE WITNESS: That's -- that's -- so far, 11:19:34
16 that's correct. I mean, before October 3rd, that's
17 correct.

18 Q. BY MR. NORTON: And then on October 24th, you
19 went back to Mr. Agarwal and asked some additional
20 questions to test? 11:19:48

21 MR. KWUN: Objection. Form.

22 THE WITNESS: That's correct.

23 Q. BY MR. NORTON: Okay. Did you ever ask to
24 speak to someone other than Mr. Agarwal in order to
25 determine the accuracy or correctness of the allocation 11:20:03

1 of expenses on the Android P&L?

2 A. No.

3 Q. Now, the Android P&L that you reviewed, where
4 did you get it?

5 A. I don't recall how we got it. I just asked 11:20:26
6 my staff to make sure we got it. And when we got it,
7 they pointed me to where it was.

8 Q. If you would look at your report -- and
9 again, let's use the most recent version of it.

10 A. Okay. 11:20:59

11 Q. That's Exhibit 672.

12 A. Okay.

13 Q. And if you would turn to your exhibit --

14 MR. KWUN: Fred, I don't think 672 has the
15 exhibits. That's the redline. 11:21:21

16 MR. NORTON: Oh, is it the redline? I
17 apologize. 671. Thank you, Michael.

18 THE WITNESS: So we're looking at 671?

19 Q. BY MR. NORTON: Yes, which has your exhibits.
20 Exhibit 3B. 11:21:43

21 A. Okay. Okay. Got it.

22 Q. All right. And that's the profit and loss
23 statements of the Android platform?

24 A. Yes.

25 Q. And Item 1 -- or Note 1 under your "Notes and 11:21:55

1 Sources," says, "Android P&L through August 20.xls,
2 received from counsel September 29, 2011."

3 A. Yes.

4 Q. All right. So is that correct, you got the
5 P&L from counsel? 11:22:11

6 A. That's correct. We did have an earlier
7 version of this, of the P&L. But the version we used for
8 finishing the full report was based on the transmission
9 that is reported in footnote 1.

10 Q. And are you relying on the earlier version 11:22:33
11 that you had, or are you relying upon the one that's
12 cited in Exhibit 3B?

13 A. The one that's cited in 3B.

14 Q. Okay. And that's the one that you got from
15 counsel? 11:22:44

16 A. Well, I presume we got the other one from
17 counsel, too. But yes, we did get that one from counsel.

18 Q. All right. And the Android P&L through
19 August 20.xls, that document, is that an audited
20 financial statement? 11:22:56

21 A. No. It's based -- as I understand it, it's a
22 printout of their own internal reporting system -- of
23 Android's internal reporting system.

24 Q. Now, it has historical data going back a few
25 years; right? 11:23:08

1 A. Yes.

2 Q. And are any of the numbers audited numbers?

3 A. No. Well, I'll say not that I know of.

4 Q. Did you look at any other financial documents

5 to -- other than the P&L itself, did you look at any 11:23:41

6 other Google financial documents to verify the accuracy

7 of the booking of expenses on the Android P&L?

8 MR. KWUN: Objection. Form.

9 THE WITNESS: I had it in my mind that I did

10 see something else, but I can't remember what it was. So 11:24:34

11 basically, the P&Ls are all that I can actually visualize

12 or remember looking at.

13 I will say that P&Ls are the sorts of

14 things -- that I saw, were the sorts of things that were

15 consistent with what I've seen in other companies for 11:24:48

16 their internal reporting of their operations.

17 Q. BY MR. NORTON: Did you look at P&Ls for

18 any -- P&Ls for any of Google's other lines of business

19 to see if the P&L you were looking at was consistent with

20 the way Google books expenses in other parts of its 11:25:06

21 business?

22 A. No. I don't think I did.

23 Q. Did anybody tell you you could not do that,

24 if you wanted to?

25 A. No. 11:25:17

1 Q. In your report at page 30 --

2 A. Yes.

3 Q. -- where you discuss your five-year -- your
4 decision to use a five-year period; right?

5 A. Yes. 13:17:58

6 Q. And you cite the Bureau of Economic Analysis
7 in Footnote 111; right?

8 A. Yes.

9 Q. And then the FASB standard that you cite
10 actually doesn't say anything about five years. It talks 13:18:10
11 about whether it's a straight line or ratio of current
12 year revenue divided by future expected revenue.

13 A. Yes. Yes.

14 Q. So if you're talking about five years, you're
15 relying on the citation of the Bureau of Economic 13:18:23
16 Analysis; right?

17 A. And my own introspection on the issue.

18 Q. All right. And you're not an accountant;
19 right?

20 A. Well, this is not an accounting issue. But 13:18:31
21 no, I'm not.

22 Q. Well, FASB is an accounting standard; right?

23 A. Yes.

24 Q. Okay. The -- when you say that a five-year
25 amortization period is consistent with prevailing 13:18:52

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303

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby
5 certify:

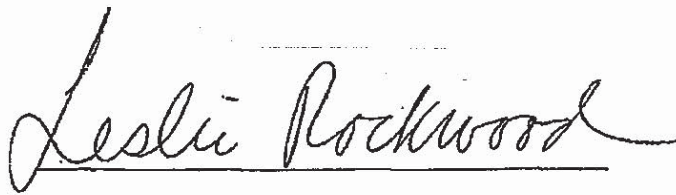
6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all
10 objections made by counsel at the time of the examination
11 were recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel
17 for any party to said action, nor am I related to any
18 party to said action, nor am I in any way interested in
19 the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 27th day of October, 2011.

22
23
24
25



LESLIE ROCKWOOD, CSR. NO. 3462